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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

In re RICHARD BINGHAM,  
  
on Habeas Corpus.

E056813

(Super.Ct.Nos. RIC1206844 &  
SWF100680)

ORIGINAL PROCEEDINGS; writ of habeas corpus. Timothy F. Freer, Judge.

Petition granted.

Jan B. Norman, under appointment by the Court of Appeal, for Petitioner.

Kamala D. Harris, Attorney General, and Meredith S. White, Deputy Attorney General, for Respondent.

The court has read and considered the petition for habeas corpus and/or mandate and the informal response filed by the Attorney General. The Attorney General concedes petitioner is entitled to the requested relief. Given the Attorney General's concession, this court may grant relief without issuance of a writ of habeas corpus or an order to show cause. (*People v. Romero* (1994) 8 Cal.4th 728, 740, fn. 7.)

Accordingly, the petition for writ of habeas corpus is granted.

Petitioner was charged with one count of defacing with graffiti (Pen. Code,<sup>1</sup> § 594, subd. (b)(1), count 1); one count of petty theft, with a prior conviction for taking or driving a vehicle unlawfully and a prior violent or serious felony conviction (§§ 484, 666, 667.5, subd. (c), or 1192.7, subd. (c), count 2); and one count of grand theft of personal property (§ 487, subd. (a), count 3).

The trial court denied petitioner's motion to dismiss the strike allegations. That same day, petitioner pleaded guilty to all three counts and admitted the prison priors and prior strike allegations. The trial court sentenced petitioner to four years on count 1, four years on count 2, stayed pursuant to section 654, and four years on count 3, also stayed pursuant to section 654.

Petitioner seeks reversal of his conviction on count 2 for petty theft with a prior, contending that it is a lesser included offense of his conviction on count 3 for grand theft. Noting that petty theft with a prior is not a separate substantive "crime" of petty theft (*People v. Tardy* (2003) 112 Cal.App.4th 783, 787), the Attorney General concedes that the conviction for petty theft alleged in count 2 was a lesser included offense of the conviction for grand theft in count 3 in that both convictions resulted from the same act of stealing copper wire from the Elsinore Valley Municipal Water District. Accordingly, the Attorney General agrees that petitioner's conviction on count 2 should be reversed as a lesser included offense of his conviction on count 3. It also agrees that petitioner was

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<sup>1</sup> All statutory references are to the Penal Code unless otherwise specified.

deprived of the effective assistance of counsel, because trial counsel failed to seek dismissal of count 2.

#### DISPOSITION

The petition for habeas corpus is granted. The Superior Court of Riverside County is directed to set aside petitioner's conviction on count 2 for petty theft with a prior, to amend the abstract of judgment accordingly, and to forward the amended abstract of judgment to the Department of Corrections and Rehabilitation.

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RAMIREZ  
P. J.

We concur:

McKINSTER  
J.

MILLER  
J.